In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 335

IRENE B. WHETSTONE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This case involves two identical suits in which the Government, in the District Court for the Northern District of Illinois, sought to reduce to judgment income taxes owed by taxpayer for the years 1944 and 1946. Taxpayer filed similar answers in each case, denying material allegations of the Government's complaints and setting forth affirmative defenses that the income tax was unconstitutional because it was utilized to reimburse the Treasury of the United States for unconstitutional expenditures, e. g., to finance wars between other nations, promote foreign aid, construct overseas military defenses, etc. Taxpayer also filed a counterclaim in each case, seeking recovery of taxes which she had paid and which she asserted were unconstitutional for the same reasons.

The District Court granted the Government's motion to dismiss the affirmative defenses and counter-

claims on the grounds that it lacked jurisdiction over the issues presented therein and that they failed to state claims upon which relief could be granted. Accordingly, the District Court entered judgment for the Government for the balance of taxes owed by taxpayer.

Taxpayer appealed to the Court of Appeals for the Seventh Circuit. She also filed motions in the Court of Appeals for a preliminary determination as to the jurisdiction of that court to review the judgments of the District Court, contending (despite the fact that taxpayer was the appellant) that there was no final judgment or order of the District Court and that the District Court had no jurisdiction over the subject-matter. The Court of Appeals denied these motions, without prejudice to taxpayer's right to renew them at the hearing of the appeals on the merits. Upon failure of taxpayer to perfect her appeals by filing printed records and briefs, the Court of Appeals, upon the Government's motion and pursuant to its Rules, dismissed the appeals. Taxpayer then petitioned this Court for a writ of certiorari.

It is submitted that the orders dismissing the appeals and denying taxpayer's motions for preliminary determination of the jurisdictional questions were clearly within the discretion of the Court of Appeals and that the petition for certiorari, on its face, does not present any question which merits review by this Court.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

SEPTEMBER, 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956

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JOHN T. FEY, Clerk

No. 335

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

IRENE B. WHETSTONE,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MEMORANDUM FOR PETITIONER IN REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION.

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MEMORANDUM FOR PETITIONER IN REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION.

Petitioner, in reply to the government's (respondent's) memorandum brief in opposition to her petition for writ of certiorari, as above entitled, directs this Court's attention to the fact that the government avoids the real issues presented by said petition as stated in the first paragraph of page 3 thereof, under the heading "Jurisdiction", wherein petitioner specifically indicates that the judgments, the finality and validity of which petitioner seeks a determination by this Court, are those entered by the United States District Court for the Northern District of Illinois, Eastern Division, on December 7, 1955. (See Appendix of said petition, pages 1(a) and 6(a) thereof.)

Petitioner calls attention to the fact that the government's contention (final paragraph of its memorandum) concerning the orders entered by the United States Court of Appeals for the Seventh Circuit, were such contention supportable, would not be controlling of the issues here on petition, because under Title 28 U.S.C., Section 1254 and subsection 1254(1), the right to petition for writ of certiorari and the right to have it considered is in no way affected by the action taken in the United States Court of Appeals where, as in these cases, the petition for certiorari was docketed with the Clerk of this Court while the appeals were still "in" the said United States Court of Appeals, and before the due date for mandate to issue.

In fact, it is obvious that the entire purpose of the said petition for writ of certiorari *is to obtain from this Court —the court of last resort—a determination of the fundamental jurisdictional issues, apparent on the face of the record, which both of the courts below refused to pass upon.*

The government's memorandum errs in its statement on page 1, and should be corrected to show that taxpayer filed similar answers, in each case involved herein, denying material allegations of the government's complaints and setting forth affirmative defenses *which among other charges* asserted that *"the revenue laws which provided for the levy of the tax were neither 'necessary nor proper' legislation * * * because they were enacted and employed to provide money for carrying into execution projects for which there is no power vested by the Constitution in the United States government"* * * * and to reimburse the Treasury

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Note: Contrary to the implication conveyed by the government in its memorandum, page 2, either party may raise jurisdictional issues on appeal. See Rule 13(b) of Rules of the United States Court of Appeals for the Seventh Circuit, printed on page 10 of Petition for Certiorari.

for such invalid withdrawals (R. 11704 pp. 9-30) (R. 11703 pp. 13-51 and pp. 64-77). However, since, at the only trial had in these actions, the pleadings, including the complaints and answers, were excluded from its consideration by the said District Court (Transcript of Proceedings, page 99) they are not subject to review by this Court. They are referred to in the petition only for the purpose of showing that material essential to a hearing on the merits was excluded by the trial court, and that the said District Court, in dismissing defendant's pleadings, denied her "all remedy at law" (Petition, pages 32-33), and disclaimed its jurisdiction of the subject matter of the action (Petition, pages 27-30).

This Court's attention is directed to the fact that the government's memorandum brief in opposition submits as its concluding statement that "the petition for certiorari, on its face, does not present any question which merits review by this Court." Petitioner submits that the petition for certiorari makes it clear that a review by this Court would not be necessary because lack of finality and validity of the judgments in question is apparent upon the face of the records.

This Court's attention is directed to the fact that in its opposing memorandum brief the government avoids the pertinent issues raised as to lack of finality and validity of the judgments rendered against your petitioner by the said District Court, which lack is apparent on the face of the records; and, *repeating its performance in the courts below, it seeks to induce this Court to desist from passing upon these substantial jurisdictional questions raised by your petitioner, its obvious purpose being to benefit thereby from the invalid judgments rendered in its favor.*

It should be apparent to this Court that the government's position is untenable and is not one which this Court can properly sustain.

It is plain that this Court has a moral obligation to pass upon the jurisdictional issues presented by petitioner and if it is the practice of this Court to make such determination without granting the petition for writ of certiorari, where lack of jurisdiction is self-evident, as in these cases, petitioner prays that such determination be made pursuant to the practices of this Court with or without the granting of said petition.

Respectfully submitted,

IRENE B. WHETSTONE, *pro se*
9820 Vanderpoel Avenue
Chicago 43, Illinois

September 21, 1956

PROOF OF SERVICE.

SUPREME COURT OF THE UNITED STATES
October Term, 1956
No. 335

Irene B. Whetstone, *Petitioner,*

v.

United States of America, *Respondent.*

AFFIDAVIT

State of Illinois }
County of Cook } ss.

Before me, the undersigned, a Notary Public, in and for the County of Cook and State of Illinois, personally appeared Irene B. Whetstone, who, being first duly sworn, deposes and says that on the 21st day of September, 1956, she served copies of Memorandum for Petitioner in Reply to Memorandum for the United States in Opposition to petition for writ of certiorari, in the above entitled case, upon the respondent, the United States of America:

(1) by mailing a copy thereof in a duly addressed envelope, postage prepaid, to Robert Tieken, United States Attorney, Room 450 Federal Court House, Chicago, Illinois, and

(2) by mailing a copy in a duly addressed envelope, with air mail postage prepaid, to the Solicitor General, Department of Justice, Washington, 25, D.C.

IRENE B. WHETSTONE

Subscribed and sworn to before me this 21st day of September, 1956.

G. Webeck
[Seal] Notary Public